

No. 12954

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United States  
Court of Appeals  
For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,  
vs.  
TITLE AND TRUST COMPANY, a Corporation,  
Respondent.

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Transcript of Record

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Petition to Review a Decision of the Tax Court  
of the United States.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Appearances

For Petitioner:

CLARENCE I. PHILLIPS, ESQ.

For Respondent:

JOHN H. PIGG, ESQ.





The Tax Court of the United States

Docket No. 21593

TITLE AND TRUST COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES

1949

Jan. 19—Petition received and filed. Taxpayer notified. Fee paid.

Jan. 24—Copy of petition served on General Counsel.

Mar. 15—Answer filed by General Counsel.

Mar. 15—Request for hearing in Portland, Oregon, filed by General Counsel.

Mar. 16—Notice issued placing proceeding on Portland, Oregon calendar. Service of answer and request made.

Aug. 22—Hearing set Oct. 24, 1949, Portland, Oregon.

Oct. 27—Hearing had before Judge Arundell, on merits. Stipulation of facts filed at hearing. Petitioner's brief due 12/12/49. Respondent's brief due 1/10/50. Replies due 2/9/50.

Nov. 17—Transcript of hearing 10/27/49 filed.

Dec. 6—Brief filed by taxpayer. 12/7/49. Copy served.

1950

- Jan. 9—Motion for extension to 2/13/50 to file brief, and to 3/15/50 to file reply brief, filed by General Counsel. Granted 1/9/50.
- Feb. 8—Motion for extension to Mar. 13, 1950, to file respondent's brief and April 14, 1950, to file petitioner's reply brief filed by General Counsel. Granted 2/8/50.
- Mar. 13—Motion for extension of time to March 23/50 to file brief, filed by General Counsel. 3/14/50. Granted.
- Mar. 20—Reply brief filed by General Counsel.
- Apr. 12—Reply brief filed by taxpayer. Copy served.
- Oct. 16—Findings of fact and opinion rendered, Arundell, J. Decision will be entered under rule 50. Copy served.
- Nov. 15—Respondent's computation for entry of decision filed.
- Nov. 27—Hearing set Dec. 20/50, Wash., D. C., under rule 50.
- Dec. 11—Consent to respondent's computation filed by taxpayer.
- Dec. 13—Decision entered, Arundell, J., Div. 7.

1951

- Feb. 28—Petition for review by U. S. Court of Appeals for the 9th Circuit and statement of points filed by General Counsel.
- Mar. 13—Proof of service of petition filed. (Taxpayer and attorney) 2.

1951

Mar. 27—Motion for extension to May 29/51 to prepare and transmit the record filed by General Counsel.

Mar. 27—Order enlarging time to May 29/51 to prepare and transmit the record entered.

May 10—Designation of contents of record on review filed by General Counsel.

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The Tax Court of the United States

T. C. Docket No. 21593

TITLE AND TRUST COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bureau Symbols IT:90D:EEH), dated November 2, 1948, and as a basis of this proceeding, hereby alleges as follows:

I.

The petitioner is a corporation organized and existing under the laws of the State of Oregon, and as a part of its business, issues and sells title insurance, and is regulated by the Insurance Com-

missioner of the State of Oregon pursuant to statutes of the State of Oregon. The principal office of the petitioner is 325 S.W. Fourth Avenue, Portland 4, Oregon. The return for the period here involved was filed with the Collector for the District of Oregon at Portland, Oregon.

## II.

The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on November 2, 1948.

## III.

The taxes in controversy are income and excess profits taxes for the taxable year ended December 31, 1945, and in the amount of \$36,377.35.

## IV.

The determination of tax set forth in the said Notice of Deficiency is based upon the following errors:

(a) In refusing to allow as a deduction the amount of \$46,889.63 which constituted unearned premiums and which were credited to a "reserve for unearned premiums" in accordance with order of the Insurance Commissioner of the State of Oregon.

(b) In increasing the excess profits net income of the corporation in the amount of \$42,546.61.

(c) In determining an excess profits tax liability for the taxable year ended December 31, 1945, in the amount of \$36,377.35.

## V.

Facts upon which the petitioner relies as a basis of this proceeding are as follows:

The petitioner is an insurance company as defined under the statutes of Oregon (Section 101-105 Oregon Compiled Laws Annotated) and under the statutes of Oregon (Section 101-105 Oregon Compiled Laws Annotated) the Insurance Commissioner is given the power and authority to enforce all of the laws of the State of Oregon relating to insurance, and is required to issue such department rulings, instructions and orders as he may deem necessary to secure the enforcement of the insurance laws of Oregon. An insurance company seeking to commence or continue business in the State of Oregon is required to be authorized or licensed, and if so licensed is granted a certificate of authority to transact insurance business in the State of Oregon upon its compliance with all of the laws of the State and the regulations of the Insurance Commissioner relating to such companies, and such certificate of authority may be revoked on thirty days' notice by the Insurance Commissioner or may be suspended by the Insurance Commissioner temporarily if the Insurance Commissioner deems necessary or advantageous.

Under the provisions of Section 101-136 Oregon Compiled Laws Annotated, it is required that the Insurance Commissioner shall, whenever he deems it advisable in the interest of policyholders or for the public good, examine into the affairs of any insurance company and such insurance company is required to make available to said insurance com-

missioner, or his examiner, all books, papers, records or documents of such insurance company, and the officers or agents of such insurance company may be examined under oath concerning the affairs of such company.

Under the provisions of Section 101-137 Oregon Compiled Laws Annotated, the Insurance Commissioner of the State of Oregon has the duty and authority to examine into the affairs of any insurance company and in ascertaining the condition of said insurance company, and particularly in ascertaining its liabilities, unless otherwise provided in said act, there shall be charged the capital stock, all outstanding claims, a sum equal to the total unearned premiums on the policies in force computed on a pro-rata basis, and such an amount as may be found necessary as a reserve to provide for unearned premium liability, and the amounts of such reserve are required to be formulated by such rules as the Insurance Commissioner of the State of Oregon may deem adequate and consistent with the law.

Under date of December 26, 1945, as a result of an examination made by a duly authorized examiner of the Department of Insurance for the State of Oregon, the Insurance Commissioner, by letter, addressed to this petitioner required the petitioner to establish, segregate and maintain an unearned premium or reinsurance reserve which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums and shall be charged as a reserve liability of the said

petitioner in statements of the petitioner; that after the expiration of 180 months from January 1, 1942, that portion of the unearned premium established more than 180 months prior thereto shall be released, and may thereafter be used for corporate purposes.

Pursuant to the order of the Insurance Commissioner of the State of Oregon, the petitioner reduced its premium earnings for the year 1945 by the sum of \$46,889.63, which amount was equal to three per cent of the total gross title insurance premiums received on account of policies of insurance issued during the calendar years of 1942, 1943, 1944 and 1945.

That the petitioner was compelled to reduce its earnings in accordance with said order, and a refusal to comply with said order may have resulted in the Commissioner refusing to issue the necessary certificate for the petitioner to continue business as an insurance company in the State of Oregon.

That the reduction of the title insurance premium earnings for the year 1945 in the amount of \$46,889.63 representing the amount of unearned premiums was a proper and allowable reduction from income on the federal income tax return of the petitioner in 1945, and should be allowed as a reduction.

Wherefore, the petitioner prays that this court may hear the proceeding and determine that the amount of \$46,889.63 was a proper deduction by the petitioner from the income for the purpose of reporting federal income and excess profits taxes

for the year 1945, and that the above court determine that the Commissioner of Internal Revenue erred in determining a deficiency in tax in the amount of \$36,377.35.

TITLE AND TRUST  
COMPANY,

By /s/ E. T. DWYER,  
Vice-President.

/s/ CLARENCE D. PHILLIPS,  
Attorney for Petitioner.

State of Oregon,  
County of Multnomah—ss.

E. T. Dwyer, being duly sworn, says that he is the Vice-President of Title and Trust Company, a corporation of Oregon, petitioner above named, and that he has read the foregoing petition and is familiar with the statements contained therein and that the statements contained therein are true except those stated to be upon information and belief, and those he believes to be true.

/s/ E. T. DWYER.

Subscribed and sworn to before me this 14th day of January, 1949.

[Seal] /s/ RUTH H. OLSON,  
Notary Public for Oregon.

My Commission expires December 25, 1950.

Of Counsel:

GRIFFITH, PECK, PHILLIPS &  
COUGHLIN.



EXHIBIT "A"

Treasury Department  
Internal Revenue Service  
Seattle 1, Washington

November 2, 1948.

Office of Internal  
Revenue Agent in Charge  
Seattle Division,  
305 A Jones Building,  
1331 Third Avenue.  
IT:90D:EEH

Title and Trust Company,  
325 S.W. Fourth Avenue,  
Portland 4, Oregon.

Gentlemen:

You are advised that the determination of your excess profits tax liability for the taxable year ended December 31, 1945, discloses a deficiency of \$36,377.35, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States, at its principal address, Washington 25, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are

requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, Seattle 1, Washington, for the attention of IT:90D:EEH. The signing and filing of this form will expediate the closing of your return(s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner,

By /s/ S. R. STOCKTON,  
Internal Revenue  
Agent in Charge.

Enclosures:

Statement  
Form of Waiver  
EEH:EGG

IT:90D:EEH

STATEMENT

Title and Trust Company  
325 S. W. Fourth Avenue  
Portland 4, Oregon

Tax Liability for the Taxable Year Ended December 31, 1945

	Liability	Assessed	Deficiency
Excess Profits Tax .....	\$127,475.59	\$91,098.24	\$36,377.35

In making this determination of your excess profits tax liability, careful consideration has been given to the report of examination dated September 5, 1947; to your protest dated March 24, 1948; and to the statements made at the conferences held on July 7, 1948, and October 6, 1948.

A copy of this letter and statement has been mailed to your representative, Mr. Clarence D. Phillips, Electric Building, Portland 5, Oregon, in accordance with the authority contained in the power of attorney executed by you.

## Adjustments to Net Income

Net income as disclosed by return, Form 1120.....	\$203,935.77
Unallowable deductions and additional income:	
(a) Unearned premiums .....	46,889.63
Total.....	<u>\$250,825.40</u>
Non-taxable income and additional deductions:	
(b) Amounts due the State of Oregon.....	4,343.02
Net income, adjusted.....	<u>\$246,482.38</u>

## Explanation of Adjustments

(a) In a schedule attached to your income and declared value excess profits tax return for the year 1945 you reported title insurance premiums in the total amount of \$560,926.28. You reported that \$46,889.63 of such total premiums constituted "unearned premiums" and credited that sum to a "reserve for unearned premiums." The sum of \$46,889.63 was not included in net income reported.

The Bureau hold that title insurance premiums received in the total amount of \$560,926.28 during the year 1945 were earned in that year. Net income reported has, therefore, been increased by the sum of \$46,889.63.

(b) It is held that the allowable deduction for amounts due the State of Oregon in lieu of State excise tax was \$24,232.60. As this deduction was claimed on your return in the amount of \$19,888.58, your net income is reduced by the difference of \$4,343.02 in the amounts shown.

## Adjustments to Excess Profits Net Income

Excess profits net income as disclosed by return (Form 1121) .....	\$193,422.61
Additions:	
(a) Net of the adjustments to net income.....	42,546.61
Excess profits net income, corrected.....	<u>\$235,969.22</u>

## Explanation of Adjustment

(a) **Your excess profits net income is increased** by the net amount of the adjustments to the net income reported on your return, Form 1120, as explained above.

Additions to net income.....	\$46,889.63
Reductions of net income.....	4,343.02
Net Addition.....	<u>\$42,546.61</u>

## Excess Profits Tax Computation

Excess profits net income, corrected.....	\$235,969.22	
Less: Specific exemption .....	\$10,000.00	
Excess profits credit .....	76,874.97	86,874.97
Adjusted excess profits net income.....	\$149,094.25	
Excess profits tax, 95% of \$149,094.25.....	\$141,639.54	
Less: 10% credit, Section 784, I.R.C.....	14,163.95	
Correct excess profits tax liability.....	\$127,475.59	
Previous assessment—Original Account No. 4000157.....	91,098.24	
Deficiency in excess profits tax.....	\$ 36,377.35	

Received and filed January 19, 1949.

[Title of Tax Court and Cause.]

## ANSWER

Comes Now the Commissioner of Internal Revenue, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed herein, admits, denies and alleges as follows:

1. Admits that petitioner is a corporation organized and existing under the laws of the State of Oregon; that as a part of its business, it issues and sells title insurance; that the principal office of the petitioner is 325 S. W. Fourth Avenue, Portland 4, Oregon, and that the return for the period here involved was filed with the Collector for the District of Oregon at Portland, Oregon. Denies the remaining allegations contained in paragraph I of the petition.

2. Admits the allegations contained in paragraph II of the petition.

3. Admits the allegations contained in paragraph III of the petition.

4. Denies that he erred in his determination of the deficiency as shown by the notice of deficiency from which petitioner's appeal is taken. Specifically denies that he erred in the manner and form as alleged in paragraph IV(a), (b) and (c) of the petition. Specifically denies that he determined petitioner's excess profits tax liability for the taxable year ended December 31, 1945, in the amount of \$36,377.35. Alleges that he, the respondent, determined petitioner's correct excess profits tax liability for that year to be the amount of, to wit: \$127,475.59, and the deficiency in excess profits tax for that year to be the amount of, to wit: \$36,377.35.

5. For lack of sufficient knowledge or information upon the basis of which to form a belief as to the truth or falsity thereof, denies the allegations contained in paragraph V of the petition.

6. Denies generally and specifically each and every material allegation contained in the petition, not hereinbefore specifically admitted, qualified or denied.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

Of Counsel:

WILFORD H. PAYNE,  
Division Counsel;

JOHN H. PIGG,  
Special Attorney,  
Bureau of Internal Revenue.

Received and filed March 15, 1949.

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The Tax Court of the United States

Docket No. 21593

TITLE AND TRUST COMPANY,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

October 27, 1949

(Met, pursuant to notice, at 11:45 o'clock  
a.m.)

Before: Hon. C. Rogers Arundell, Judge.

Appearances:

C. D. PHILLIPS, ESQ.,  
807 Electrical Building, Portland, Oregon,  
Appearing on Behalf of the Petitioner.

J. H. PIGG, ESQ.,  
(Hon. Charles Oliphant, Chief Counsel,  
Bureau of Internal Revenue),  
Appearing for the Respondent.

PROCEEDINGS

The Clerk: Docket 21593, Title and Trust Company.

Mr. Phillips: C. D. Phillips for the Petitioner.

Mr. Pigg: John H. Pigg for the Respondent.

The Court: I would like to have a brief statement about what this is about, Mr. Phillips.

\* \* \* \* \*

Mr. Phillips: Do you want to put the return in?

The Court: Perhaps you should.

Mr. Pigg: I hadn't planned on it. It was the respondent's belief that all matters were sufficiently covered by the stipulation of fact; but just for the record I offer at this time the Respondent's Exhibit A for the information of the Court, the Petitioner's income tax return for the year 1945.

The Court: It will be received.

(Whereupon the document was marked for identification as Respondent's Exhibit A and was received.)

Mr. Pigg: Exhibit A has all of the schedules attached thereto.

The Court: Do you want to withdraw that and substitute photostatic copies?

Mr. Pigg: With permission to substitute photostatic copies.

The Court: Very well.

Is that all?

Mr. Pigg: That's all for Respondent.

The Court: We will go over until two o'clock.

(Whereupon, at 12:20 p.m. o'clock, the hearing in the above-entitled matter was concluded.)

Filed T.C.U.S. November 17, 1949.

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[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys of record, that the following facts are true and that the same may be so considered and accepted by the Court as offered in evidence by the parties to this proceeding: Provided, however, that this stipulation shall be without prejudice to the right of either of the parties hereto to introduce other and further evidence not inconsistent with the facts herein stipulated:

1. Petitioner, an Oregon corporation, was organized on July 18, 1908, under the name of Security Title and Trust Company, for the purpose of carrying on the business of insuring titles to real estate, including the issuance of "policies of insurance and other contracts and reports affecting titles to real estate." Thereafter, and on or about August 16, 1908, petitioner's corporate name was duly changed to Title and Trust Company. At all times material to this proceeding petitioner was engaged in the business for which it was organized, and legally qualified under the statutes of the State of Oregon to engage in such business, and in connection with



its said business issued exclusively perpetual title insurance policies. Its office and principal place of business is in Portland, Oregon. It keeps its books and files the returns on the accrual basis. Its returns for the taxable year 1945 were made to the Collector for the District of Oregon.

2. The notice of deficiency, a true and correct copy of which is attached to and made a part of the petition herein, as Exhibit A thereof, was mailed by respondent to petitioner on November 2, 1948.

3. The tax in controversy in this proceeding is excess profits tax for the taxable year ended December 31, 1945, in the amount of \$36,377.35.

4. Under date of December 26, 1945, the Insurance Commissioner of the State of Oregon addressed and delivered to petitioner a document in words and figures, as follows:

“State of Oregon  
Department of Insurance  
Fire Marshal Department

December 26, 1945.

“Title and Trust Company,  
325 S. W. Fourth Avenue,  
Portland 4, Oregon.

Dear Sirs:

“Pursuant to Section 101-136, O.C.L.A., an examination of your Company was made as of September 30, 1945, by a duly authorized examiner of this Department. Enclosed herewith is a copy of the examination report.

“On page 23 of said report attention is called to the advisability of making adequate reserve provision for unearned premiums. Study has been given by the Department towards the formulation of a reasonable, adequate, and sound rule for the determination of such a reserve. Consideration was given to the trend of your experience, premium volume, and size and types of risks underwritten. In order to make broader comparison with the requirements and procedures followed in other states as regards such reserves, the statutes of the various states were analyzed. As a consequence, in accordance with the provisions of Section 101-137, O.C.L.A., the following rule has been promulgated as applicable to your Company.

“1. The Title and Trust Company shall establish, segregate and maintain an unearned premium or reinsurance reserve as hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums and shall be charged as a reserve liability of your corporation in your statements; such reserve shall be cumulative and shall be established and shall consist of the following:

“(a) As at December 31, 1945, or within a period of three years thereafter an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during the four calendar years—1942, 1943, 1944 and 1945; and

“(b) Monthly at the close of each month beginning January, 1946, 3% of the total gross

fees and premiums received or to be received on account of policies written during the preceding calendar month;

“(c) After the expiration of 180 months from January 1, 1942, that portion of the unearned premium or reinsurance reserve established more than 180 months prior shall be released and shall no longer constitute part of the unearned premium or reinsurance reserve and may be used for any corporate purposes.

“2. As at December 31, 1945, the Title and Trust Company may charge against and reduce thereby the ‘Title Loss Reserve’ carried in the amount of \$50,000.00 the total of losses paid during the four calendar years 1942, 1943, 1944, and 1945 on account of title policies issued; and monthly thereafter all such losses paid during the preceding calendar month may be similarly charged against this reserve. Provided, however, that the amount of said reserve shall never be less than an amount at least equal to the aggregate estimated amount due or to become due on account of all unpaid losses and claims upon title insurance policies of which the company has received notice nor less than the aggregate of title losses incurred during the preceding 36 months. After the expiration of 180 months from January 1, 1942, the balance in this reserve account, in excess of the aforementioned estimated amounts for claims due or accrued or 36 months aggregate losses, may be released and be available for any corporate use or purpose.

“3. Commencing January 1, 1946, the Title and

Trust Company shall not issue a policy of title insurance for a single transaction, the face amount of which shall exceed an amount which is five times the capital and surplus of your Company; but nothing herein shall prevent the Title and Trust Company from assuming the risk on a single policy jointly with another title insurance company or companies in excess of five times the Title and Trust Company's capital and surplus, provided that the total amount of such insurance shall not exceed five times the total combined capital and surplus of all such companies liable under such insurance; and provided that each such company shall not assume more than its proportionate share of the total amount at risk in accordance with the above-defined maximum retention limit.

“If at any date subsequent hereto, upon review or examination as provided in the Oregon Insurance Laws, it is determined that the reserves and procedures established by the rules as promulgated above are inadequate for the safety and welfare of the policyholders and not in the best interests of the company operations, said rules will be modified as necessary; furthermore, should any statute hereafter be adopted by the State of Oregon bearing on this subject, then any sections of these rules inconsistent or in conflict with said statute or statutes shall be automatically voided.

“Yours very truly,

“/s/ S. B. THOMPSON,

“SETH B. THOMPSON,

“Insurance Commissioner.”

5. As at the close of the taxable year ended December 31, 1945, petitioner set upon its books an account captioned "Unearned Premiums," and at that time credited to that account the amount of \$46,889.63, with a corresponding debit to "Undivided Profits." The covering journal entry was as follows:

	Debit	Credit
"Undivided Profits .....	\$46,889.63	
Unearned Premiums .....		\$46,889.63
To establish unearned premiums for years 1942, 1943, 1944 and 1945 in compliance with the ruling and demand of the Insurance Commissioner of the State of Oregon, dated December 26, 1945:		
1942 Premium \$238,305.09 3% .....		\$ 7,149.15
1943 Premium 330,204.13 3% .....		9,906.12
1944 Premium 433,552.98 3% .....		13,006.59
1945 Premium 560,926.28 3% .....		16,827.77
		<hr/>
Total.....		\$46,889.63"
		<hr/> <hr/>

6. In its income and declared value excess-profits tax return for the taxable year ended December 31, 1945, petitioner reported a gross income of \$601,664.97, consisting of the following items:

Title insurance premiums (home and branch offices).....	\$560,926.28	
Less: <del>Earned</del> Premiums".....	46,889.63	\$514,036.65
<i>UNEARNED</i>		
Abstract premiums (home and branch offices).....		26,426.70
Commissions (trust, escrow and general).....		29,991.76
Interest .....		13,132.36
Rents .....		17,312.50
Dividends .....		765.00
		<hr/>
Total gross income reported.....		\$601,664.97

There then followed items of deduction aggregating \$407,627.36, which amount, as offset by the amounts of \$375.00 and \$9,523.16, representing non-taxable interest and net long-term capital gain,

respectively, none of which items are here in controversy, resulted in the net income of \$203,935.77, as reported on said return.

7. The total of losses paid by petitioner during each of the calendar years 1942, 1943, 1944, and 1945 on account of title insurance policies theretofore issued by it, which amounts were charged, on its books, to the "Undivided Profits" account, and claimed as deductions on its income tax returns for those years are as follows:

Year	Amount
1942 .....	\$2,157.52
1943 .....	1,126.97
1944 .....	2,267.77
1945 .....	7,394.39

Other than as above indicated by the losses so paid by petitioner during the years mentioned, there were no estimated unpaid losses and/or claims upon title insurance policies of which petitioner had notice during those years.

8. Among the items of liabilities shown on petitioner's balance sheets as at the beginning and close of the taxable year ended December 31, 1945, as shown by Schedule L of its income tax return for that year, are the following:

	Beginning	Close
"Reserve for Title Insurance Losses....."	\$50,000.00	\$50,000.00
Reserve for Unearned Premiums....."		46,889.63

The above-described "Reserve for Title Insurance Losses" balance sheet item is carried on petitioner's

books in an account captioned "Reserve for Contingencies," and represents a surplus reserve, no part of which has been claimed as a deduction on any income tax return filed by petitioner. Said "Reserve for Contingencies" account was set up on petitioner's books on July 26, 1934, at which time there was credited to that account the amount of \$500.00, with continuing monthly credits of like amounts until December, 1935, and thereafter like monthly credits of \$1,000.00, until May 31, 1939, when the credit balance of said account reached \$50,000.00, and has so remained since that date. In each instance the corresponding debit entry was to "Contingent Losses," the annually accumulated debit balances of which account were treated on the income tax returns of petitioner, for the years indicated, as charges to "Surplus." Typical of the covering monthly journal entries is the first one, relating to the July, 1934, credit, as follows:

	Debit	Credit
"Contingent Losses .....	\$500.00	
Reserve for Contingencies .....		\$500.00
Monthly charge for possible losses in accordance with Resolution of Board of Directors."		

9. Of the securities owned by petitioner and listed among the assets shown on its balance sheet as at December 31, 1945, as reported on its income tax return for the taxable year ended on that date, securities of a value of \$100,000.00 were, on that date, on deposit with the Treasurer of the State of Oregon, as a "guarantee fund," within the meaning of Sections 101-1501 and 101-1502, O.C.L.A.

10. In his determination of the deficiency involved in this proceeding, the respondent disallowed as an exclusion and/or deduction from petitioner's gross income for the taxable year ended December 31, 1945, the aforesaid amount of \$46,889.63, which action was accompanied by the following explanatory statement:

“In a schedule attached to your income and declared value excess profits tax return for the year 1945 you reported title insurance premiums in the total amount of \$560,926.28. You reported that \$46,889.63 of such total premiums constituted ‘unearned premiums’ and credited that sum to a ‘reserve for unearned premiums.’ The sum of \$46,889.63 was not included in net income reported.

The Bureau holds that title insurance premiums received in the total amount of \$560,926.28 during the year 1945 were earned in that year. Net income reported has, therefore, been increased by the sum of \$46,889.63.”

11. In its consideration and decision of the issue or issues involved in this proceeding, the Court may take judicial notice of all statutory laws of the State of Oregon relating to the subject matter of said issue or issues, including Oregon Compiled Laws Annotated (O.C.L.A.), Sections 101-105(1), (2); 101-107(7); 101-136 and 101-137, relating to “Insurance Law Generally”; and Sections 101-1501, 101-1502, 101-1503, 101-1504 and 101-1505, relating



to "Title Insurance Companies," and any amendments thereto.

/s/ CLARENCE D. PHILLIPS,  
Attorney for Petitioner.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, At-  
torney for Respondent.

Filed at hearing October 27, 1949.

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The Tax Court of the United States  
Docket No. 21593

TITLE AND TRUST COMPANY,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Promulgated October 16, 1950.

#### FINDINGS OF FACT AND OPINION

Complying with the directive of the Oregon Insurance Commissioner issued pursuant to Oregon statutes, petitioner segregated from its 1945 premium income an amount equal to three per cent of its total premiums received on title insurance policies issued during the calendar years 1942, 1943, 1944 and 1945. This amount was deemed by the directive to constitute unearned premiums and was set up on petitioner's books as a reserve as of

December 31, 1945. The directive further required petitioner to add to the reserve monthly thereafter an amount equal to three per cent of its premium income. At the end of 180 months from January 1, 1942, such portion of the reserve as had been maintained for more than 180 months was to be released for general corporate purposes. Held, petitioner properly excluded as "unearned premiums" from its 1945 premium income the amount of the reserve set up as of December 31, 1945. *Early v. Lawyers Title Insurance Corp.*, 132 Fed. (2d) 42, followed.

CLARENCE D. PHILLIPS, ESQ.,

For the petitioner.

JOHN H. PIGG, ESQ.,

For the respondent.

Respondent has determined a deficiency in petitioner's excess profits tax for the calendar year 1945 in the amount of \$36,377.35.

The only adjustment set forth in the deficiency notice which is disputed is respondent's determination that the entire title insurance premiums reported by the petitioner were earned and that petitioner improperly deducted therefrom "unearned premiums" in the amount of \$46,889.63.

The proceeding has been submitted upon the pleadings and a stipulation of facts. The stipulated facts are summarized below in material part.

#### Findings of Fact

Petitioner is a corporation legally qualified by the State of Oregon to carry on the business of

insuring titles to real estate, and has its principal place of business in Portland, Oregon. During the taxable year 1945, over 75 per cent of its gross income was derived from its title insurance business in connection with which it issued exclusively perpetual title insurance policies.

Petitioner files its returns and keeps its books on the accrual basis. Its income and excess profits tax returns for the calendar years 1945 were filed with the collector of internal revenue for the district of Oregon. Respondent mailed the deficiency notice involved in this proceeding to petitioner on November 2, 1948.

On December 26, 1945, petitioner received from the Insurance Commissioner of the State of Oregon the following directive:

Pursuant to Section 101-136, O.C.L.A.,\* an examination of your Company was made as of September 30, 1945, by a duly authorized examiner of this Department. Enclosed herewith is a copy of the examination report.

On page 23 of said report attention is called to the advisability of making adequate reserve provision for unearned premiums. Study has been given by the Department towards the formulation of a reasonable, adequate, and sound rule for the determination of such a reserve. Consideration was given to the trend of your experience, premium volume, and size and types of risks underwritten. In order to

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\*Oregon Compiled Laws Annotated. (Explanation ours.)

make broader comparison with the requirements and procedures followed in other states as regards such reserves, the statutes of the various states were analyzed. As a consequence, in accordance with the provisions of Section 101-137, O.C.L.A., the following rule has been promulgated as applicable to your Company.

1. The Title and Trust Company shall establish, segregate and maintain an unearned premium or reinsurance reserve as hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums and shall be charged as a reserve liability of your corporation in your statements; such reserve shall be cumulative and shall be established and shall consist of the following:

(a) As at December 31, 1945, or within a period of three years thereafter an amount equal to 3% of the total gross fees and premiums received or to be received on account of policies issued during the four calendar years—1942, 1943, 1944 and 1945; and

(b) Monthly at the close of each month beginning January, 1946, 3% of the total gross fees and premiums received or to be received on account of policies written during the preceding calendar month;

(c) After the expiration of 180 months from January 1, 1942, that portion of the unearned premium or reinsurance reserve established more than 180 months prior shall be released

and shall no longer constitute part of the un-earned premium or reinsurance reserve and may be used for any corporate purposes.

2. As at December 31, 1945, the Title and Trust Company may charge against and reduce thereby the "Title Loss Reserve" carried in the amount of \$50,000.00 the total of losses paid during the four calendar years 1942, 1943, 1944, and 1945 on account of title policies issued; and monthly thereafter all such losses paid during the preceding calendar month may be similarly charged against this reserve. Provided, however, that the amount of said reserve shall never be less than an amount at least equal to the aggregate estimated amount due or to become due on account of all unpaid losses and claims upon title insurance policies of which the company has received notice nor less than the aggregate of title losses incurred during the preceding 36 months. After the expiration of 180 months from January 1, 1942, the balance in this reserve account, in excess of the aforementioned estimated amounts for claims due or accrued or 36 months aggregate losses, may be released and be available for any corporate use or purpose.

3. Commencing January 1, 1946, the Title and Trust Company shall not issue a policy of title insurance for a single transaction, the face amount of which shall exceed an amount which is five times the capital and surplus of your Company; but nothing herein shall prevent the Title and Trust Company from assuming the risk on a single policy

jointly with another title insurance company or companies in excess of five times the Title and Trust Company's capital and surplus, provided that the total amount of such insurance shall not exceed five times the total combined capital and surplus of all such companies liable under such insurance; and provided that each such company shall not assume more than its proportionate share of the total amount at risk in accordance with the above-defined maximum retention limit.

If at any date subsequent hereto, upon review or examination as provided in the Oregon Insurance Laws, it is determined that the reserves and procedures established by the rules as promulgated above are inadequate for the safety and welfare of the policyholders and not in the best interests of the company operations, said rules will be modified as necessary; furthermore, should any statute hereafter be adopted by the State of Oregon bearing on this subject, then any sections of these rules inconsistent or in conflict with said statute or statutes shall be automatically voided.

In compliance with the above directive, petitioner set up on its books on December 31, 1945, an account captioned "Unearned Premiums" with a credit to that account in the amount of \$46,889.63 and a corresponding debit to "Undivided Profits." The figure of \$46,889.63 was determined in accordance with the above directive of the Insurance Commissioner as follows:

1942 Premium	\$238,305.09 . . . . .3%	\$ 7,149.15
1943 Premium	\$330,204.13 . . . . .3%	9,906.12
1944 Premium	\$433,552.98 . . . . .3%	13,006.59
1945 Premium	\$560,926.28 . . . . .3%	16,827.77
Total		\$46,889.63

The losses paid by petitioner during each of the calendar years 1942, 1943, 1944 and 1945 on account of title insurance policies previously issued by it were charged on its books in each of the above years to the "Undivided Profits" account and were claimed as deductions on its income tax returns for those years in the following amounts:

Year	Amount
1942 . . . . .	\$2,157.52
1943 . . . . .	1,126.97
1944 . . . . .	2,267.77
1945 . . . . .	7,394.39

Other than as indicated by the losses paid by petitioner in the above years, there were no estimated unpaid losses or claims upon title insurance policies of which petitioner had notice during those years.

Among the items of liabilities shown on petitioner's balance sheets as at the beginning and close of the calendar year ended December 31, 1945, were the following:

	Beginning	Close
Reserve for Title Insurance Losses.....	\$50,000.00	\$50,000.00
Reserve for Unearned Premiums.....		46,889.63

The above-described "Reserve for Title Insurance Losses" balance sheet item was carried on peti-

tioner's books in an account captioned "Reserve for Contingencies" and represented a surplus reserve, no part of which has been claimed as a deduction on any income tax return filed by petitioner. This "Reserve for Contingencies" account was set up on petitioner's books on July 26, 1934, by a credit to that account in the amount of \$500 with continuing monthly credits of like amounts until December, 1935, and thereafter like monthly credits of \$1,000 until May 31, 1939, when the credit balance of the account equalled \$50,000. In each instance the corresponding debit entry was to "Contingent Losses," the annually accumulated debit balances of this account charged to "Surplus."

Of the securities owned by petitioner and listed among the assets shown on its balance sheet as at December 31, 1945, securities of a value of \$100,000 were, on that date, on deposit with the Treasurer of the State of Oregon as a "Guarantee Fund" as required by the insurance laws of the State of Oregon.

In its income and declared value excess profits tax return for the year 1945, petitioner reported a gross income of \$601,664.97, consisting of the following items:

Title insurance premiums (home and branch offices).....	\$560,926.28	
Less: "Unearned Premiums".....	46,889.63	\$514,036.65
Abstract premiums (home and branch offices).....		26,426.70
Commissions (trust, escrow and general).....		29,991.76
Interest .....		13,132.36
Rents .....		17,312.50
Dividends .....		765.00
Total gross income reported.....		\$601,664.97



This amount, as offset by items of \$375 and \$9,523.16, representing non-taxable interest and net long-term capital gain, respectively, neither of which items is here in controversy, resulted in net income of \$203,935.77 reported in petitioner's return. In the determination of the deficiency, respondent disallowed as an exclusion or deduction from petitioner's gross income the amount of \$46,889.63 reported on the return as "Unearned Premiums" with the following explanation:

In a schedule attached to your income and declared value excess profits tax return for the year 1945 you reported title insurance premiums in the total amount of \$560,926.28. You reported that \$46,889.63 of such total premiums constituted "unearned premiums" and credited that sum to a "reserve for unearned premiums." The sum of \$46,889.63 was not included in net income reported.

The Bureau holds that title insurance premiums received in the total amount of \$560,926.28 during the year 1945 were earned in that year. Net income reported has, therefore, been increased by the sum of \$46,889.63.

### Opinion

Arundell, Judge.

The only question here is whether petitioner properly excluded the amount designated as "unearned premiums" from its title insurance premium income. This depends upon whether the \$46,889.63 so excluded constituted unearned premiums within

the meaning of section 204(b)(1)(4) and (5) of the Internal Revenue Code.<sup>1</sup>

In *Early v. Lawyers Title Insurance Corp.*, 132 Fed. (2d) 42, Judge Parker, speaking for the Fourth Circuit, declared that such portions of title insurance premiums as were given for a specified period the status of unearned premiums by either law or contract should likewise be treated tax-wise as unearned premiums under section 204(b), supra. It was subsequently held by the Second Circuit that a state statute did not impart to title insurance premiums the status of being "unearned" where it was impossible to determine whether the portions

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<sup>1</sup>Sec. 204. Insurance Companies Other Than Life or Mutual.

\* \* \*

(b) Definition of Income, etc.—In the case of an insurance company subject to the tax imposed by this section:

(1) Gross Income—"Gross income" means the sum of (A) the combined gross amount earned during the taxable year, from investment income and from underwriting income as provided in this subsection, computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners, and (B) gain during the taxable year from the sale or other disposition of property, and (C) all other items constituting gross income under section 22; except that in the case of a mutual fire insurance company described in paragraph (1) of subsection (a) of this section, the amount of single deposit premiums paid to such company shall not be included in gross income;

\* \* \*

(4) Underwriting Income — "Underwriting income" means the premiums earned on insurance

of the premiums required by the statute to be set aside as a reserve would ever be released and become "free assets" of the company. *City Title Insurance Co. v. Commissioner*, 152 Fed. (2d) 859.

Deductibility of the statutorily prescribed reserves out of title insurance premium income thus turns on whether the local statute calls for a mere insolvency reserve of indefinite duration or whether the required reserve is established by segregating a portion of the premium income for a specified period when the risk of loss is presumably greatest. In the latter instance, the reserve becomes taxable income to the company when it is released for general corporate purposes at the expiration of the prescribed period. *Commissioner v. Dallas Title & Guaranty Co.*, 119 Fed. (2d) 211.

Respondent does not question the authority of *Early v. Lawyers Title Insurance Corp.*, supra (see I.T. 3798, 1946—1 C.B. 127), but argues it is not applicable because the reserve here in question was set up under a directive of the Oregon Insurance

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contracts during the taxable year less losses incurred and expenses incurred;

(5) Premiums Earned—"Premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

From the amount of gross premiums written on insurance contracts during the taxable year, deduct return premiums and premiums paid for reinsurance. To the result so obtained add unearned premiums on outstanding business at the end of the preceding taxable year and deduct unearned premiums on outstanding business at the end of the taxable year. \* \* \*

Commissioner instead of under the direct mandate of an Oregon statute.

The Insurance Code of Oregon embodied in Title 101 of Oregon Compiled Laws Annotated (O.C.L.A.) gives the Insurance Commissioner under section 101-105, O.C.L.A.,<sup>2</sup> authority to issue such department rulings, instructions and orders as he deems necessary to secure the enforcement of the Insurance Code. Concerning insurance reserves, section 101-137, O.C.L.A., provides as follows:

§101-137. Examination: Reserve: Liability: (Formulating or adopting rules.) In ascertaining the condition of an insurance company under the provisions of this act, or in any examination made by the insurance commissioner, his deputy, or examiner, he shall allow as assets only such investments, cash and accounts as are authorized by the laws of this state at the date of the examination, or under the existing laws of the state or country under which such company is organized and which investment he may approve or reject, but unpaid premiums on

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<sup>2</sup>§101-105. General powers and duties of commissioner. (1) The insurance commissioner shall have and exercise the power to enforce all the laws of the state relating to insurance, and it shall be his duty to enforce all the provisions of such laws for the public good. He shall issue such department rulings, instructions and orders as he may deem necessary to secure the enforcement of the provisions of this act, but nothing contained in this act shall be construed to prevent any company or persons affected by any order or action of the insurance commissioner from testing the validity of same in any court of competent jurisdiction.

policies written within three months shall be admitted as available resources. In ascertaining his [sic] liabilities, unless otherwise provided in this act, there shall be charged the capital stock, all outstanding claims, a sum equal to the total unearned premiums on the policies in force computed on a pro rata basis, and such an amount as may be found necessary as a reserve to provide for the future payment of deferred and undetermined claims for losses and promised benefits. In determining the amount of such reserve or unearned premium liability, the insurance commissioner, his deputy or examiner may formulate such rules as he may deem proper and consistent with law, or he may adopt such rules as are used in other states or approved by the national convention of insurance commissioners.

Acting pursuant to section 101-137, O.C.L.A., supra, the Oregon Insurance Commissioner directed the petitioner "to segregate and maintain an unearned premium or reinsurance reserve as hereafter provided, which shall at all times and for all purposes be deemed and shall constitute unearned portions of the premiums \* \* \*" The reserves were required to be three per cent of total premiums received on policies issued during 1942, 1943, 1944 and 1945 and three per cent of monthly premiums received thereafter. After 180 months, such portion of the reserve as had been established for more than 180 months would be released for general corporate purposes.

From our reading of the Oregon statutes and the directive issued to petitioner by the Oregon Insurance Commissioner, we perceive nothing to indicate that the Insurance Commissioner exceeded the bounds of his statutory authority to make rules concerning reserves. It should be apparent that a valid exercise of the discretion entrusted to the Insurance Commissioner by the Oregon statutes should have equal weight and effect as the statutes themselves. *Maryland Casualty Co. v. United States*, 251 U.S. 342. See also *Fidelity & Deposit Co. of Maryland v. United States*, . . . F. Supp. . . ., *aff'd.*, 177 Fed. (2d) 805, rehearing denied, 178 Fed. (2d) 753.

Respondent urges in the alternative that so much of the \$46,889.63 as is attributable to premium income received in the years 1942, 1943 and 1944 cannot properly be excluded from petitioner's premium income in the taxable year 1945. Allowance of such an exclusion, asserts respondent, would distort petitioner's 1945 income. We cannot agree. Petitioner was required by the directive of the Insurance Commissioner to set aside in the reserve a sum equal to three per cent of its premiums received on policies written during 1945 and the three preceding years. Although measured in part by premium income in the three years prior to 1945, the reserve was taken from 1945 income and thus made unavailable to the company for general corporate use the funds so restricted. The amount of the reserve was, therefore, properly excluded from "earned premiums" in 1945 when for the first time

the State of Oregon required the establishment of this reserve. A like question faced the Circuit Court in *Early v. Lawyers Title Insurance Corp.*, supra, p. 46, where it was held that deduction of the portion of the reserve attributable to title insurance contracts issued prior to the effective date of the state statute there involved did not distort the insurance company's income in the taxable year. We are in accord with the result reached by the Circuit Court.

We conclude that respondent erred in his determination that petitioner cannot exclude from its 1945 premium income the amount required to be segregated as unearned premiums by the Oregon Insurance Commissioner pursuant to Oregon law.

Because of an uncontested adjustment,

Decision will be entered under Rule 50.

Served October 16, 1950.

The Tax Court of the United States  
Washington

Docket No. 21593

TITLE AND TRUST COMPANY,  
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

In accordance with the Opinion of the Court promulgated October 16, 1950, the respondent herein, on November 15, 1950, filed a recomputation for entry of decision, and the petitioner herein, on December 11, 1950, filed a notice of acquiescence in the respondent's recomputation. Wherefore, it is

Ordered and Decided: That there is an overpayment in excess profits tax for the calendar year 1945 in the amount of \$3,713.29, all of which was paid within two years before the mailing of the notice of deficiency.

[Seal]      /s/ C. R. ARUNDELL,  
Judge.

Entered Dec. 13, 1950.

Served Dec. 14, 1950.



In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 21593

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

TITLE AND TRUST COMPANY,  
Respondent on Review.

PETITION FOR REVIEW AND  
STATEMENT OF POINTS

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by the Tax Court of the United States on December 13, 1950, pursuant to its Findings of Fact and Opinion promulgated October 16, 1950 (15 T.C. No. 69), ordering and deciding "that there is an overpayment in excess profits tax for the calendar year 1945 in the amount of \$3,713.29, all of which was paid within two years before the mailing of the notice of deficiency." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the United States Internal Revenue Code as amended.

I.

Jurisdiction

The Title and Trust Company, respondent on

review (hereinafter sometimes referred to as "taxpayer"), is a corporation organized, under the laws of the State of Oregon, to carry on the business of insuring titles to real estate and has its principal place of business in Portland, Oregon, and filed its corporation income and declared value excess profits tax and corporation excess profits tax returns for the calendar year 1945, the taxable year involved herein, with the United States Collector of Internal Revenue for the District of Oregon, whose office is located at Portland, Oregon, which collection district is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought. This case involves Federal excess profits tax for the calendar year 1945.

## II.

### Nature of Controversy

The question to be presented to this Honorable Court for review is: Where taxpayer, in compliance with a directive of the Oregon Insurance Commissioner, dated December 26, 1945, segregated from its 1945 premium income an amount (\$46,889.63) equal to 3 per cent of its total premiums received on title insurance policies issued during the years 1942 through 1945, and set up such amount on its books as of December 31, 1945, as an "unearned premiums" reserve—(1) did the Tax Court correctly hold that the amount of such reserve was properly excludible from taxpayer's title insurance premium gross income as "unearned premiums" within the meaning of Section 204(b)

(1)(4) and (5) of the Internal Revenue Code for Federal tax purposes; and alternatively, is that portion of the reserve (\$30,061.86) attributable to premiums on policies written during the years 1942, 1943 and 1944, in any event excludible or deductible from gross income for the taxable year 1945?

The Tax Court concluded that the directive issued to the respondent on review by the Oregon Insurance Commissioner did not exceed the bounds of his statutory authority to make rules concerning reserves (Section 101-137 of Oregon Compiled Laws Annotated) and that such directive was a valid exercise of his discretion entrusted to the Insurance Commissioner by the Oregon statutes and should be accorded the weight and effect as the statutes themselves, citing and relying on *Early v. Lawyers Title Insurance Corporation* (CA 4, 1943), 132 F. (2) 42, and accordingly allowed the full amount of the reserve set up as of December 31, 1945, to be excluded or deducted from taxpayer's gross income for tax purposes; and it further held that since the entire amount was taken from 1945 income, and it was thus made unavailable for general corporate uses, the entire amount was therefore properly excluded from gross income by the taxpayer, although the amount of the reserve set up was measured in part by premium income in the three years prior to 1945.

The petitioner on review presents that he did not err in disallowing as an exclusion from taxpayer's gross income for the taxable year 1945 the amount of \$46,889.63, representing three per cent of the

total title insurance premiums received by it on account of tile insurance contracts written during the calendar years 1942, 1943, 1944 and 1945, inasmuch as no such exclusion is either authorized or required by the laws of the taxpayer's corporate domicile; and that, in no event, no part of such reserve as is attributable to the premiums received by taxpayer during the years 1942, 1943 and 1944, on account of title insurance policies written by it during those years, amounting to \$30,081.86, represents a proper exclusion or deduction from taxpayer's gross income for the taxable year 1945.

### III.

#### Statement of Points

That the Commissioner of Internal Revenue, being aggrieved by the opinion and decision of The Tax Court of the United States in this proceeding, hereby petitions for a review of said opinion and decision by the United States Court of Appeals for the Ninth Circuit, and for the correction of the manifest errors which therein occurred and intervened to his prejudice. The Commissioner submits the following statement of points upon which he intends to rely as the basis of this petition for review:

That The Tax Court of the United States erred:

1. In holding and deciding that the taxpayer properly excluded as "unearned premiums" from its 1945 premium gross income the amount of a reserve set up as of December 31, 1945, in the

amount of \$46,889.63 in compliance with a directive issued to it by the Oregon Insurance Commissioner.

2. In failing to hold and decide that the taxpayer erroneously excluded as "unearned premiums" from its 1945 premium gross income the amount of a reserve set up as of December 31, 1945, in the amount of \$46,889.63 in compliance with a directive issued to it by the Oregon Insurance Commissioner.

3. In holding and concluding that the "directive" issued on December 26, 1945, "should have equal weight and effect as the statutes (of Oregon) themselves."

4. In failing to hold and conclude that no exclusion of the amount of such reserve is either authorized or required by the laws of taxpayer's corporate domicile.

5. In failing to hold and decide that the directive was of a legislative rather than an administrative character and accordingly void.

6. In holding and deciding in effect that the amount of reserve set up on December 31, 1945, in compliance with the directive of the Oregon Insurance Commissioner constituted "unearned premiums" within the meaning of Section 204(b)(1) and (5) of the Internal Revenue Code.

7. In failing to hold and decide that the amount of the reserve set up on December 31, 1945, in compliance with the directive of the Oregon Insurance Commissioner did not constitute "unearned

premiums" within the meaning of Section 204(b) (1) and (5) of the Internal Revenue Code.

8. In failing to hold and find that the so-called "reserve" taxpayer set up as of December 31, 1945, was not one in fact.

9. In failing to hold and decide that to the extent, if any, it was enforceable in Oregon, it nevertheless, did not provide a basis for an exclusion or deduction from gross income for Federal income tax purposes.

10. In failing to hold and find that the amount of \$46,889.63 set up in a so-called reserve, constitutes premiums earned on insurance contracts written by taxpayer in 1945 and is taxable as such.

11. In holding and deciding that, although part of the amount the reserve was measured by premiums income in the three years prior to 1945, the entire amount thereof is properly excluded from "earned premium" income for 1945 and is accordingly not taxable in that year.

12. In failing to hold and decide, alternatively, that, in no event, the portion of the reserve (\$30,081.86) attributable to the premiums received by taxpayer during the years 1942, 1943 and 1944, on account of title insurance policies written by it during those years, represents a proper exclusion or deduction from taxpayer's gross income for the year 1945.

13. In that its opinion and decision are contrary

to the laws and the regulations and are not supported by substantial evidence of record.

14. In ordering and deciding that there is an overpayment of excess profits tax for the calendar year 1945 in the amount of \$3,713.29.

15. In failing to order and decide that there is a deficiency in excess profits tax for the calendar year 1945 in the amount of \$36,377.35.

Wherefore, the Commissioner petitions that said findings of fact and opinion and decision of The Tax Court of the United States be reviewed by The United States Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of the said Court for filing; and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal Revenue, Counsel for Petitioner on Review.

Of Counsel:

CLAUDE R. MARSHALL,  
Special Attorney,  
Bureau of Internal Revenue.

Received and filed T.C.U.S., February 28, 1951.

[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: E. T. Dwyer, Vice-President,  
Title and Trust Company,  
325 S.W. Fourth Avenue,  
Portland, Oregon.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of February, 1951, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of February, 1951.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Coun-  
sel for Petitioner on Review.

Service acknowledged.

Received and filed T.C.U.S., March 13, 1951.



[Title of Court of Appeals and Cause.]

NOTICE OF FILING PETITION  
FOR REVIEW

To: Clarence D. Phillips, Esq.,  
c/o Griffith, Peck, Phillips & Coughlin,  
807 Electric Building,  
Portland, Oregon.

You are hereby notified that the Commissioner of Internal Revenue did, on the 28th day of February, 1951, file with the Clerk of The Tax Court of the United States, at Washington, D. C., a petition for review by the United States Court of Appeals for the Ninth Circuit of the decision of The Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review as filed is hereto attached and served upon you.

Dated this 28th day of February, 1951.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal Revenue, Coun-  
sel for Petitioner on Review.

Service acknowledged.

Received and filed T.C.U.S., March 13, 1951.

The Tax Court of the United States

Docket No. 21593

COMMISSIONER OF INTERNAL REVENUE,

Petitioner on Review,

vs.

TITLE AND TRUST COMPANY,

Respondent on Review.

## ORDER ENLARGING TIME

On motion of counsel for the petitioner on review,  
it is

Ordered that the time for preparation, transmission and delivery of the record sur petition for review of the above-entitled proceeding in the United States Court of Appeals for the Ninth Circuit is extended to May 29, 1951.

/s/ JOHN W. KERN,  
Chief Judge.

Dated Washington, D. C., March 27, 1951.

Served March 30, 1951.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 21593

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

TITLE & TRUST COMPANY,  
Respondent on Review.

DESIGNATION OF CONTENTS OF  
RECORD ON REVIEW

To the Clerk of The Tax Court of the United  
States:

You will please prepare, transmit and deliver to the Clerk of the United States Court of Appeals for the Ninth Circuit pursuant to the provisions of Rule 11 of the rules of that Court as amended, the entire original record in the above-entitled proceeding in connection with the petition for review by the Court of Appeals heretofore filed by the above-named petitioner on review.

Said transcript is to be prepared as required by law and the rules of the said Court of Appeals for the Ninth Circuit.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of  
Internal Revenue.

A copy of this Designation of Contents of Record on Review was duly forwarded by registered mail on this 10th day of May, 1951, to Clarence D. Phillips, Esq., c/o Griffith, Peck, Phillips & Coughlin, 807 Electric Building, Portland 5, Oregon, counsel for Respondent on Review.

/s/ C. R. MARSHALL,

Special Attorney, Bureau of  
Internal Revenue.

Received and filed T.C.U.S., May 10, 1951.

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[Title of Tax Court and Cause.]

#### CERTIFICATE

I, Victor S. Mersch, Clerk of The Tax Court of the United States do hereby certify that the foregoing documents, 1 to 27, inclusive, constitute and are all of the original papers and proceedings, including respondent's Exhibit A, on file in my office as the original and complete record in the proceeding before The Tax Court of the United States in the above-entitled proceedings and in which the petitioner of The Tax Court proceeding has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceeding, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United

States, at Washington, in the District of Columbia,  
this 22nd day of May, 1951.

[Seal]      /s/ VICTOR S. MERSCH,  
   Clerk, The Tax Court of the  
   United States.

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[Endorsed]: No. 12954. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Title and Trust Company, a corporation, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed May 28, 1951.

   /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

[Title of Court of Appeals and Cause.]

### ASSIGNMENT OF ERROR TO BE URGED

The Commissioner of Internal Revenue intends to urge the following assignment of error on review of the above-entitled proceeding by the above-entitled Court:

The Tax Court erred in allowing the Title and Trust Company, the respondent in the above-entitled proceeding, a deduction or reduction of \$46,889.63, or any part thereof, from or in its gross income for the taxable year 1945, on account of so-called "unearned premiums" for the years 1942 to 1945, inclusive, and as a result thereof in expunging the deficiency determined by the Commissioner against the taxpayer in that year in the sum of \$36,377.35, and each and every part thereof.

This assignment of error is intended as a composite of the statement of points to be urged set out in the petition for review of the Commissioner of Internal Revenue filed February 28, 1951.

June 4, 1951.

/s/ THERON L. CAUDLE,  
Assistant Attorney General.